

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Cassandra Fendley	Team: Squad #5	CCRB Case #: 201503434	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 03/12/2014 1:13 AM	Location of Incident: § 87(2)(b)	Precinct: 34	18 Mo. SOL 9/12/2015	EO SOL 9/12/2015	
Date/Time CV Reported Thu, 04/30/2015 6:11 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 04/30/2015 6:11 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Jonathan Munoz	20918	940937	034 PCT
2. POM Edwin Florez	22262	943244	034 PCT
3. POM Daniel Cross	02635	944473	034 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Jonathan Munoz	Abuse: PO Jonathan Munoz searched § 87(2)(b)	§ 87(2)(b)
B.POM Jonathan Munoz	Abuse: PO Jonathan Munoz prevented § 87(2)(b) from recording an incident.	§ 87(2)(b)
C.POM Edwin Florez	Abuse: PO Edwin Florez prevented § 87(2)(b) from recording an incident.	§ 87(2)(b)
D.POM Daniel Cross	Abuse: PO Daniel Cross prevented § 87(2)(b) from recording an incident.	§ 87(2)(b)
E.POM Daniel Cross	Abuse: PO Daniel Cross damaged § 87(2)(b)'s property.	§ 87(2)(b)

Case Summary

On April 30, 2015, this complaint was filed by an unidentified individual via the CCRB's online website on behalf of § 87(2)(b) and § 87(2)(b) after that individual watched the YouTube, liveleak.com and NBC4 News stories of the incident. This incident was also discussed in numerous news articles, which were published beginning on § 87(2)(b) (Board Review 1). Therefore, this case was placed on the CCRB's sensitive case list.

On March 12, 2014, at approximately 1:13 a.m., PO Jonathan Munoz, of the 34th Precinct at the time of the incident, approached § 87(2)(b) and immediately searched her front sweater pocket (**Allegation A**). § 87(2)(b) who was a bystander, attempted to film the incident on a cell phone. PO Munoz approached § 87(2)(b) and, with the help of PO Edwin Florez and PO Daniel Cross, both of the 34th Precinct at the time of the incident, handcuffed § 87(2)(b) in order to physically prevent him from recording the incident (**Allegations B, C and D**). § 87(2)(b) was then placed into the back of the officers' police vehicle. Just before driving to the stationhouse, PO Cross threw the cell phone § 87(2)(b) had attempted to record the incident with out of the police vehicle's open window and onto the concrete (**Allegation E**). § 87(2)(b) was arrested for obstructing governmental administration, disorderly conduct and resisting arrest.

§ 87(2)(b), § 87(2)(a) 160.50

Mediation, Civil and Criminal Histories

This case was not suitable for mediation § 87(2)(e), § 87(2)(g) filed a notice of claim for this incident, but it was still pending and the 50-h Hearing had not been scheduled as of June 23, 2015 (Board Review 2). § 87(2)(b), § 87(2)(a) 160.50

Civilian and Officer CCRB Histories

PO Munoz has been a member of the service for nine years and there are three previous substantiated CCRB allegations against him. In CCRB case 200614371, allegations of a threat of arrest, a retaliatory summons and discourtesy were substantiated against PO Munoz and he received command discipline for the retaliatory arrest and the discourtesy. In CCRB cases 201008889 and 201308890, he was cited for other misconduct for failure to make a memo book entry. § 87(2)(b), § 87(2)(g)

PO Florez has been a member of the service for eight years and there are no substantiated allegations against him. § 87(2)(g)

PO Cross has been a member of the service for seven years and there are two substantiated CCRB allegations against him. In CCRB case 201303361, allegations of physical force and intentionally providing a false statement to the CCRB were substantiated against PO Cross and he received charges as a result.

This is the first complaint involving § 87(2)(b) and § 87(2)(b) (Board Review 4 and 5).

Potential Issues

The CCRB was not able to obtain any civilian or officer statements regarding this case. § 87(2)(b)'s attorney, § 87(2)(b) did not allow him to provide a statement in regards due to his pending litigation. Despite multiple attempts to contact § 87(2)(b) she remained unavailable. The information provided by IAB was incorrect for § 87(2)(b) Lexis Nexis searches were

negative for § 87(2)(b) and there were over fifty people listed as “K. § 87(2)(b) in the New York City area alone. Neither the Manhattan District Attorney’s Office nor the Patrolman’s Benevolent Association allowed PO Munoz, PO Florez and PO Cross to provide statements due to possible criminal charges against them relating to this incident. However, there is video footage of all allegations.

Investigative Findings and Recommendations

Allegation A – Abuse of Authority: PO Jonathan Munoz searched § 87(2)(b)

There are no civilian or officer statements regarding this incident. However, there are three separate camera angles of video footage in regards (Board Review 6). The video footage began at 12:53:02 a.m. on March 12, 2014. § 87(2)(b) was in and out of view of the multiple camera angles from 12:58:16 a.m., until she was approached by PO Munoz at 01:13:03 a.m. During those 15 minutes, § 87(2)(b) is seen smoking a cigarette and talking to other unidentified individuals. At 01:13:05 Camera 1 shows § 87(2)(b) grabbing her front sweatshirt pocket as PO Munoz walked towards her. § 87(2)(b) was holding only a cigarette in her right hand and no objects or bulges could be seen on her person. At 01:13:06 a.m., PO Munoz pointed at § 87(2)(b)s front sweater pocket and, four seconds later, PO Munoz reached into § 87(2)(b)s pocket. No items were recovered by PO Munoz and § 87(2)(b) was never summonsed or arrested in regards.

To perform a search, an officer must have probable cause that the person to be searched has committed a crime. People v. De Bour, 40 N.Y.2d 210 (1976) (Board Review 7).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation B – Abuse of Authority: PO Jonathan Munoz prevented § 87(2)(b) from recording an incident.

Allegation C – Abuse of Authority: PO Edwin Florez prevented § 87(2)(b) from recording an incident.

Allegation D – Abuse of Authority: PO Daniel Cross prevented § 87(2)(b) from recording an incident.

As depicted in Camera 1 of the video footage, § 87(2)(b) was handed a cell phone from an unidentified bystander and he attempted to record PO Munoz’s interaction with § 87(2)(b). At 01:13:21 a.m., § 87(2)(b) was opening something on the screen of the cell phone. Nothing else was in his hands. At 01:13:24 a.m., PO Munoz and PO Florez both walked towards § 87(2)(b). At 01:13:25 a.m., PO Munoz grabbed § 87(2)(b)s left arm and § 87(2)(b)

attempted to jerk his arms away. § 87(2)(b) clenched his hands and PO Munoz held onto § 87(2)(b)'s hands. At 01:13:27 a.m., PO Florez approached and grabbed § 87(2)(b)'s right arm.

At that point, the struggle went out of view of Camera 1 and into view of Camera 3 of the video footage. At 01:13:26 a.m., § 87(2)(b) stiffened his arms with his elbows bent and PO Cross approached the struggle. At 01:13:28, PO Cross grabbed the back of § 87(2)(b)'s shirt collar and at 01:13:34 a.m., PO Munoz grabbed the back of § 87(2)(b)'s neck while still holding onto his left arm. At that point, the struggle went out of view of Camera 3 of the video footage. § 87(2)(b) could be seen next on Camera 2 of the video footage, at 01:13:57, when he was walked to the back of the police vehicle, already rear handcuffed.

According to a FINEST message released by the Chief of Department to all members of the service on August 6, 2014, officers must not interfere with a person's use of recording devices to record police interactions. Also, mere recording of an incident does not constitute interference with police operations (Board Review 8). According to Patrol Guide Procedure 208-03, none of the following constitutes probable cause for arrest or detention of an onlooker unless the safety of officers or other persons is directly endangered: (1) speech alone, even though crude and vulgar; (2) requesting and making notes of shield numbers or names of members of the service; (3) taking photographs, videotapes or tape recordings; and (4) remaining in the vicinity of the stop or arrest (Board Review 9).

§ 87(2)(b), § 87(2)(g)
[REDACTED]

Allegation E – Abuse of Authority: PO Daniel Cross damaged § 87(2)(b)'s property.

As depicted in Camera 2 of the video footage, PO Cross entered the driver seat of the police vehicle at 01:14:05 a.m. At 01:14:13 a.m., PO Cross threw a cell phone out of the police vehicle's open front passenger window, put the police vehicle in gear and drove away. The cell phone landed on the ground.

Officers may damage property only when it is reasonably necessary to do so. Onderdonk v. New York, 170 Misc. 2d 155 (1996, Court of Claims) (Board Review 10).

§ 87(2)(b), § 87(2)(g)
[REDACTED]

Pod: 5

Investigator:	_____	_____	_____
	Signature	Print	Date

Supervisor:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date